IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.17/2006
WITH
CIVIL APPLICATION NO. 220/06
AND
CIVIL REVISION APPLICATION NO.18/2006
WITH
CIVIL APPLICATION NO. 221/06

1. Shri Vishwasrao Babusaheb Rane,
2. Shri Babasaheb (Babab) Krishnarao Rane;
3. Shri Vijayarao Babasaheb Rane;
4. Shri Rajesaheb Ababasaheb Rane (since deceased) represented by his legal heirs :
   (a) Smt. Suwasini Rajaseheb Rane Sardessai, wife of the deceased
   (b) Shri Pradip Rajasaheb Rane Sardessai, son of the deceased,
   (c) Smt. Pranali Pradip Rane Sardessai, daughter of the deceased,
   All residents of House No.47, Vadaval, Post Assonora, Goa.
5. Shri Manikrao Babasaheb Rane, residing at Deulwada, Vadawal, Bicholim, Goa. ..... Petitioners.

V/s.

(1) Devalaya of Shri Santeri, Quelbai and Gadouso of Odauli, through its attorney Shri Sagun Malik, residing at Ladfem, Latambarcem, Bicholim, Goa.
(2) Communidade of Latambarcem, through its Attorney with Office at Kasarpal-Latambarcem, Bicholim – Goa (served through the Administrator of Communidade, Mapusa-Goa). ..... Respondents.

Shri D. Pangam, Advocate for the petitioner.

Shri S.D. Lotlikar, Senior Advocate with Ms. Shambhavi Rao, Advocate for respondent No.1.

Mr. Amrut Kansar, Advocate for respondent No.2.

CORAM : P.V. KAKADE, J.

DATE : 9th October, 2006.

ORAL ORDER :

Both these applications are filed by the unsuccessful defendants against the order passed by the Civil Judge, Sr. Division, at Bicholim rejecting their application under Order 7, Rule 11(a) & (d), as well as Order 12, Rule 6 of the Civil Procedure Code seeking rejection of the plaint as well as passing Judgment on the basis of the so called admission of the plaintiff.

2. I have heard the learned Counsel for both the parties. Perused the record.

The plaintiff-Devasthan filed a suit against the defendants seeking declaration that the plaintiff was owner in possession of the property and consequently, entitled to get recorded its name in the survey records in respect of the suit property and further perpetual injunction was

sought for as a consequential relief against the defendants. The suit stoutly challenged by the defendants. In doing so, an application under Order 7, Rule 11, clauses (a) and (d) of the C.P.Code came to be filed, which was contested by the plaintiff and after hearing both the parties, the learned trial Judge was of the view that it was not a fit case to invoke the said provision and dismissed the application. Hence, the present revision applications.

3. The only question for consideration in these matters is whether the suit is barred by the Devasthan Regulation as permission is not obtained to file the present suit from the competent authority under the said Regulation. The question was also raised that there was no cause of action to file the suit and, therefore, on that count also the suit was not maintainable.

The learned Counsel for both the parties took me through various provisions of the Devasthan Regulation along with the provisions of the Goa Administrative Act, 1965 with its Rules. Having perused the factual aspects involved in the dispute and the relevant legal provisions applicable to the same, I am inclined to concur with the findings recorded by the trial Judge holding that impugned applications made by the defendants were devoid of any merit and, therefore, were liable to be

dismissed.

4. It appears that the trial Judge relied upon the ruling of the Single Judge of this Court in the case of ***Shri Deu Rudreshwar Temple Arvalem, Sanquelim, Bicholim, Bardez. vs. Shri Dinkar Vassant Budkule and anr.,*** 1999(4) ALL MR 35 wherein it was categorically held that considering the object and purpose behind the requirement of sanction under Article 182 of the Devasthan Regulation, the one granted by the Tribunal cannot be said to be bad in law. It also cannot be said that the plaint was defective. Moreover, mere filing of the suit without prior permission by the Devasthan can neither be considered as illegality nor it will vitiate the proceedings to the extent that it would entitle the Court to reject the plaint under Order 7, Rule 11(d) of the C.P. Code. In other words, it was held that want of sanction from the Administrative Tribunal under the Devasthan Regulation could be, at the most, an illegality which could be curable, but the plaint could not be rejected on that count. The learned Counsel for the petitioners submitted that the ruling was not applicable because in the said proceedings involved in the said ruling the permission was specifically obtained and was part of the record. However, I prefer to disagree with the learned Counsel. The basic principle laid down by this ruling with which I fully agree is to the effect that non-

obtaining of sanction from the Administrative Tribunal under the Devasthan Regulation would be a curable irregularity and the plaint cannot be rejected threshold without giving any opportunity to the party concerned to take further steps in order to obtain such sanction. In the present case before us, taking into account the scope and spirit and the provisions of Articles 182 to 185 of the Devasthan Regulation, I must note that such sanction could be obtained even pending the suit and the concerned authority shall be entitled to examine the pros and cons of the issue whether the sanction is required to be granted or not under the relevant provision.

5. Similarly, the issues sought to be raised with regard to the want of cause of action as well as consequent issue of bar of limitation, are also the mixed question of law and facts and, therefore, those are required to be adjudicated on the basis of available evidence in the course of the trial and not by an application for rejection of the plaint on the ground that the suit is barred under the said provisions.

6. In other words, I do not see any jurisdictional illegality in the orders passed by the trial Court as contemplated by the provision of Section 115 of the C.P. Code and, therefore, hold that the orders passed by

the trial are just, legal and proper. It is further directed that the questions which were sought to be raised by way an application under Order 7, Rule 11 of the C.P. Code and under Order 12, Rule 6 of the C.P. Code would be open for contention during the trial and the trial Court shall settle the issue on the dispute involved as well as the relevant aspect sought to be raised at this stage and adjudicate the same after giving opportunity to both the sides to lead evidence, according to law. With this direction, both the revision petitions stand dismissed with no order as to costs. Consequently, both the civil applications also stand disposed of with no order as to costs.

P.V. KAKADE, J.

ssm.